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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
09/340,391	06/28/99	BESSETTE	S 45112-023
		EXAMINER	
		HM12/1030	LERYNGE N PAPER NUMBER 12
WILLEM F GADIANO ESQ MCDERMOTT WILL& EMERY 600 13TH STREET N W WASHINGTON DC 20005		1616	DATE MAILED: 10/30/01

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

### OFFICE ACTION SUMMARY

Responsive to communication(s) filed on 8/6/01

This action is FINAL.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

#### Disposition of Claims

Claim(s) 1, 3, 6, 7, 11, 13, 14 & 17 is/are pending in the application.  
Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 Claim(s) \_\_\_\_\_ is/are allowed.  
 Claim(s) 4, 5-7, 11, 13, 14 & 17 is/are rejected.  
 Claim(s) \_\_\_\_\_ is/are objected to.  
 Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

#### Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.  
 The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.  
 The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.  
 The specification is objected to by the Examiner.  
 The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).  
 All  Some\*  None of the CERTIFIED copies of the priority documents have been  
 received.  
 received in Application No. (Series Code/Serial Number) \_\_\_\_\_  
 received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

- Notice of Reference Cited, PTO-892  
 Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_  
 Interview Summary, PTO-413  
 Notice of Draftsperson's Patent Drawing Review, PTO-948  
 Notice of Informal Patent Application, PTO-152

-SEE OFFICE ACTION ON THE FOLLOWING PAGES-

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Receipt is acknowledged of Request for Time, and amendment 8/16/01.

Applicant's election without traverse of pyrethrin and benzyl alcohol species in Paper No. 11 is acknowledged.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 5-7, 11, 13-14 and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Tradenames are not to be in claims; the generic form, at least associated with MGK 264 should be in claim--if applicant insists on MGK.

The rejection re acceptable and derivative is maintained for claims 1, 7 and 14. Applicants arguments have been considered, but examiner takes the broad view; anything is a derivative, and acceptable since definitions: re, --by derivative we mean these compounds--are absent from the specification.

Claims 1, 5-7, 11, 13, 14 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Casida in view of Bessette et al.

The rejection of record is maintained.

Casida teaches it is well known to use piperonyl butoxide and MGK-264 with pyrethrins (p. 196) and synthetic pyrethroids, as chrysanthemate ester (p. B9. combination with other

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insecticides is also shown. Bessette is exemplary in presentation of acceptable carriers (Casida p. 196), mentions aerosols and mosquito coils--both applied to locus where control is desired, as is well known in the art)--see dry powder and benzyl alcohol mixes (p. 15, 16), and focuses on natural insecticides.

Claims 14 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Casida.

As indicated above, Casida uses MGK 264 and chrysanthemate compounds, ester, in admix with acceptable carriers, applied to locus where control is desired.

Applicant's arguments filed 8/6/01 have been fully considered but they are not persuasive. Applicants arguments are to effect one in the art reading in light of the specification would know what is meant. Also, applicant states undue experimentation is not required. We withdraw the first paragraph rejection, but hold to the 2nd, as the meets and bounds of the claim are not in accord with the limitations of the specification.

As to the art rejections, they are still valid--the art of record shows the applicants compositions--we care to one iota what the functional equivalents are, of the synergist/enzyme inhibitors. The compounds are claimed; the effects follow, and no patentable weight is given to recitation of their mechanism of action--(see p. 203 of Casida).

However, as now amended, we find it would be obvious for an artisan desiring use of natural ingredients, both Casida and Bessette providing these, to utilize such a combination, instead of the more toxic chemicals used at the time of Casida.

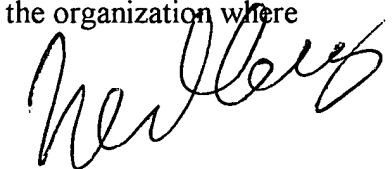
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Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is (703) 308-2412. The examiner can normally be reached on Tuesday to Friday from 7:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees, can be reached on (703) 308-4628. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3592.



NEIL S. LEVY  
PRIMARY EXAMINER

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Levy:mv

October 24, 2001